

It appears that claims 4 and 6 as listed in the Appeal Brief lacked amendments filed December 14, 1999, in response to the Office action of July 21, 1999. The following copy of claims 4 and 6 reflect that amendment.

4. The additive of claim 3 wherein the hydrophobic fibers comprise at least one selected from the group of hydrophobic fibers consisting of nylon, rayon, and hydrocarbon fibers, and wherein the hydrophilic fibers comprise at least one selected from the group of hydrophilic fibers consisting of glass, cellulose, carbon, silicon, graphite, calcined petroleum coke, and cotton fibers.

6. The additive of claim 5 wherein the reinforcing material comprises at least one comminuted material selected from the group of comminuted plant materials consisting of nut and seed shells or hulls of almond, brazil, cocoa bean, coconut, cotton, flax, grass, linseed, maize, millet, oat, peach, peanut, rice, rye, soybean, sunflower, walnut, and wheat; rice tips; rice straw; rice bran; crude pectate pulp; peat moss fibers; flax; cotton; cotton linters; wool; sugar cane; paper; bagasse; bamboo; corn stalks; sawdust; wood; bark; straw; cork; dehydrated vegetable matter; whole ground corn cobs; corn cob light density pith core; corn cob ground woody ring portion; corn cob chaff portion; cotton seed stems; flax stems; wheat stems; sunflower seed stems; soybean stems; maize stems; rye grass stems; millet stems; and mixtures thereof.

UPDATE OF SECTION II OF THE APPEAL BRIEF

BOARD DECISION ON COPENDING S/N 09/307,544

As an update, applicant wishes to direct attention to Board Decision dated July 17, 2003 for Application S/N 09/307,544 (Appeal No. 2003-0604) in which very similar claims (well plug additive comprising a dry mixture of polymer/crosslinking agent/reinforcing material, and method of making) were rejected under 35 USC 103 over the same art of record (Horner et al., Githens, Sydansk, House et al., and Merrill).

The Board stated that the common issue of the 103 rejections, "is whether the examiner has provided a proper factual foundation supporting her conclusion that one of ordinary skill in the art would have expected that the addition of inert solids (for example, sand), before activation with water, rather than after activation with water, would provide no substantial difference in results."

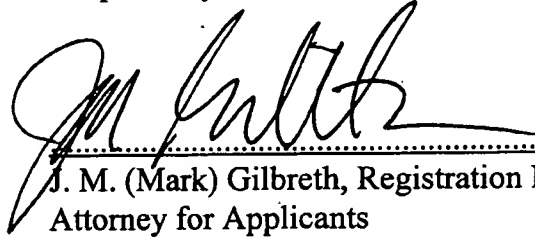
After finding a "lack of factual foundation," the Board reversed the 103 rejections.

BOARD DECISION ON COPENDING S/N 09/296,216

As another update, applicant further respectfully directs attention to Board Decision dated September 15, 2003 for Application S/N 09/296,216 (Appeal No. 2003-0515) in which very similar claims for a conformance additive were rejected under 35 USC 103 over the same art of record (Horner et al., Githens, Sydansk, House et al., and Merrill). In that Decision, the Board adopted the July 17, 2003 Board Decision, and again reversed the 103 rejections.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicants' attorney Mark Gilbreth at (713) 667-1200.

Respectfully submitted,



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